

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

MARSALIS A. ANTHONY,	)	No. 2019 cv 3842
	)	
Plaintiff,	)	Judge Charles R. Norgle
	)	
V	)	Magistrate Judge Sidney I. Schenkier
	)	
	)	
E. CARRILLO, et al.,	)	
	)	
	)	
Defendants.	)	

**JOINT RULE 59(e) MOTION TO AMEND JUDGMENT  
OR IN THE ALTERNATIVE TO VACATE IT PURSUANT TO RULE 60(b)(1)**

Defendant CITY OF CHICAGO, by and through its attorney, Mark A. Flessner, Corporation Counsel for the City of Chicago, and individual Defendant EMILIO CARRILLO, by and through one of his attorneys, Michele McGee, Assistant Corporation Counsel for the City of Chicago, pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, jointly move the Court to amend the judgment entered on February 7, 2020 to conform to the offer of judgment tendered to the Plaintiff, or, in the alternative, pursuant to Rule 60(b)(1), to vacate such judgment. In support of its motion, Defendants state as follows:

1. Defendants City of Chicago and Emilio Carrillo offered Plaintiff Marsalis Anthony (hereafter "Plaintiff") a conditional Rule 68 Offer of Judgment (attached hereto as Exhibit A) on January 22, 2020.

2. Plaintiff re-drafted and filed his own version of Defendants' Offer of Judgment (attached hereto as Exhibit B) on February 4, 2020. ECF No. 27. This version deleted two main conditions. First, a general release from liability for any and all other City of Chicago employees

beyond Defendant Emilio Carrillo, and, second, a limitation on attorneys' fees still to be determined through submission of a fee petition.

3. On February 7, 2020, the Court entered a Judgment in favor of Plaintiff based on Plaintiff's re-drafted and inaccurate Notice of Acceptance of Rule 68 Offer of Judgment. ECF No. 28.

4. Defendants' Offer of Judgment expressed an offer of judgment against the City of Chicago and Emilio Carrillo "plus reasonable attorneys' fees and costs *not to exceed* NINE THOUSAND NINE-HUNDRED AND NINETY-NINE DOLLARS AND NO/100 CENTS (\$9,999.00) accrued through the date of service of this offer of judgment." (emphasis added).

5. Plaintiff's Notice of Acceptance of Rule 68 Offer of Judgment accepted the offer of judgment "plus NINE THOUSAND NINE-HUNDRED AND NINETY-NINE DOLLARS AND NO/100 CENTS (\$9,999.00) for reasonable attorneys' fees and costs," as a *de facto* fixed fee.

6. Plaintiff altered the language of the Offer of Judgment regarding attorneys' fees in his filing to the Court.

7. Defendants' Offer of Judgment was also contingent upon Plaintiff's release of claims against Defendant Jason Kimberling.

8. Plaintiff's Notice of Acceptance contains no reference to this release. This condition is required pursuant to the Defendants' Offer of Judgment, and should be in the Notice of Acceptance.

9. Defendants seek to have the Judgment entered on February 7, 2020 amended pursuant to Rule 59(e) to reflect the terms of their actual Offer of Judgment tendered to Plaintiff.

10. In the alternative, if such amendment is contested by Plaintiff, Defendants seek relief from the judgment pursuant to Rule 60(b)(1), for there was no meeting of the minds in regard to the purported Offer of Judgment filed by Plaintiff in his case. This will allow the parties time to further negotiate the terms of another possible Offer of Judgment acceptable to both parties.

WHEREFORE, Defendants request the Court grant their Motion pursuant to Rule 59(e) to Amend the Judgment entered on February 7, 2020 to reflect the terms of their actual Offer of Judgment in this matter. In the alternative, Defendants request the Court grant Defendants relief from, and vacate, pursuant to Rule 60(b)(1), the Judgment entered on February 7, 2020 based upon Plaintiff's inaccurate version of Defendants' Offer of Judgment filed in this matter.

DATED: February 20, 2020

Respectfully submitted,

Mark A. Flessner  
Corporation Counsel

By: /s/ Cheryl Friedman  
Cheryl Friedman  
Assistant Corporation Counsel  
*Attorney for the City of Chicago*  
Federal Civil Rights Litigation Division  
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By: /s/ Michele McGee  
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**CERTIFICATE OF SERVICE**

I, Cheryl Friedman, an attorney, certify that I caused to be served the above Rule 68

Offer of Judgment via U.S. mail and electronic mail on February 20, 2020 to:

Nnanenyem Eziudo Uche  
Uche P.C.  
314 N. Loomis St  
Suite G2  
Chicago, IL 60607  
(312) 280-5341  
Email: [nenye.uche@uchelitigation.com](mailto:nenye.uche@uchelitigation.com)